

**Senate Bill No. 1781**

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Passed the Senate May 22, 2008

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*Secretary of the Senate*

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Passed the Assembly August 18, 2008

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2008, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 14501, 14511.7, 14520.5, 14524, 14539, 14549.6, 14549.7, 14552, 14560.5, 14561, 14571, 14571.1, 14571.7, 14575, 14580, 14581, 14588.1, 14588.2, 14593, 14594, 42889, 42963, 45014, and 71205.3 of, and to repeal Sections 14514.5, 14555, 14575.2, 14575.5, and 14580.5 of, the Public Resources Code, and to amend Section 31560 of the Vehicle Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1781, Committee on Environmental Quality. Environmental quality: solid waste management: used and waste tires: ballast water management.

(1) The California Beverage Container Recycling and Litter Reduction Act requires a beverage distributor to pay a redemption payment for every beverage container sold or offered for sale in the state to the Department of Conservation. The act requires the department to deposit those amounts in the California Beverage Container Recycling Fund and requires every beverage container sold or offered for sale in the state to have a minimum refund value. The money in the fund is continuously appropriated to the department for the payment of the refund values and processing fees.

The act requires a refund to be paid by a certified recycling center to a consumer or dropoff or collection center, by a processor to a certified recycling center, dropoff or collection program, curbside program, or nonprofit dropoff program, and by the department to a processor, for each beverage container received. The act defines “nonprofit dropoff program” for purposes of those provisions.

This bill would remove a nonprofit dropoff program from the list of entities to which a refund is required to be paid and would delete the definition of, and all references to, nonprofit dropoff programs.

(2) The act requires the Department of Conservation to establish and implement an auditing system to ensure that information collected, and refund values and redemption payments, comply

with the purposes of the act. The act authorizes the department to audit and investigate specified actions on and before December 31, 2001, and on and after January 1, 2002, and to take specified enforcement and disciplinary actions.

This bill would authorize the department to conduct the audits and investigations on or after January 1 of each year.

(3) The act requires specified recycling centers or locations to be open for business at least 30 hours per week and authorizes the department to certify a recycling center that will operate fewer than 30 hours per week if specified conditions are met, including being in a rural region according to the criteria of the federal Farmers Home Loan Administration.

This bill would change that condition to authorize the department to certify a recycling center in a rural region according to the loan eligibility criteria of the Rural Housing Service of the United States Department of Agriculture Rural Development Administration, or its successor agency. The bill would delete obsolete references and provisions and make other technical corrections in the act.

(4) Existing law relating to tire hauling requires a person who engages in the transportation of waste or used tires, as defined, to register with the California Integrated Waste Management Board. Existing law exempts from the registration requirement a person meeting one of various conditions, including that the person transports fewer than 10 waste or used tires at a time.

Existing law provides that it is unlawful and constitutes an infraction for a person engaged in the transportation of waste tires to violate specified provisions relating to registration.

This bill would expand the scope of that infraction to include a person operating a vehicle, or combination of vehicles, in the transportation of 10 or more used tires or waste tires, or a combination of used tires and waste tires totaling 10 or more. By expanding the application of an existing crime, this bill would impose a state-mandated local program.

(5) Existing law relating to tire recycling imposes a fee on the purchase of new tires and requires the fee to be deposited in the California Tire Recycling Management Fund in the State Treasury. Existing law requires moneys in the fund to be used to pay, among other things, the costs associated with the development and enforcement of regulations relating to the storage of waste and used tires. Existing law requires the board to consider designating

a city, county, or city and county as the enforcement authority for regulations relating to the storage of waste and used tires, and if the board makes those designations, to provide funding to the local entity based on available resources. Existing law also imposes specified civil penalties on a person who violates provisions relating to tire hauler registration and authorizes liability to be imposed in a civil action or administratively.

This bill would authorize the board, upon request of a city, county, or city and county, to designate the city, county, or city and county to exercise the board's enforcement authority under the laws relating to tire hauler registration. This bill would authorize, in addition to existing means of imposing liability on a person who violates provisions relating to tire hauler registration, an attorney authorized to act on behalf of a local enforcement agency or the board to apply to the clerk of the court in the county in which a civil penalty was imposed for a judgment to collect the penalty.

(6) The Marine Invasive Species Act generally applies to a vessel carrying or capable of carrying ballast water into the coastal waters of the state after operating outside of the coastal waters of the state, and to all ballast water and associated sediments taken on the vessel. The act requires the State Lands Commission to adopt specified regulations, including regulations requiring an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to comply with an implementation schedule for interim performance standards for the discharge of ballast water in accordance with a specified report. The act requires the commission, in consultation with the State Water Resources Control Board, the United States Coast Guard, and a specified advisory panel, to prepare or update and submit to the Legislature a specified review, relating to available technologies for ballast water treatment systems, on or before January 1, 2008.

This bill would require the commission to adopt regulations requiring compliance with an implementation schedule set forth in the bill and would require the commission to submit the review to the Legislature on or before January 1, 2009.

(7) This bill would also make various technical, nonsubstantive changes in existing law relating to solid waste management, tire hauling, tire recycling, and ballast water management.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(9) This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 14501 of the Public Resources Code is amended to read:

14501. The Legislature finds and declares as follows:

(a) Experience in this state and others demonstrates that financial incentives and convenient return systems ensure the efficient and large-scale recycling of beverage containers. Accordingly, it is the intent of the Legislature to encourage increased, and more convenient, beverage container redemption opportunities for all consumers. These redemption opportunities shall consist of dealer and other shopping center locations, independent and industry operated recycling centers, curbside programs, and other recycling systems that assure all consumers, in every region of the state, the opportunity to return beverage containers conveniently, efficiently, and economically.

(b) California grocery, beer, soft drink, container manufacturing, labor, agricultural, consumer, environmental, government, citizen, recreational, taxpayer, and recycling groups have joined together in calling for an innovative program to generate large-scale redemption and recycling of beverage containers.

(c) This division establishes a beverage container recycling goal of 80 percent.

(d) It is the intent of the Legislature to ensure that every container type proves its own recyclability.

(e) It is the intent of the Legislature to make redemption and recycling convenient to consumers, and the Legislature hereby urges cities and counties, when exercising their zoning authority, to act favorably on the siting of multimaterial recycling centers, reverse vending machines, mobile recycling units, or other types of recycling opportunities, as necessary for consumer convenience,

and the overall success of litter abatement and beverage container recycling in the state.

(f) The purpose of this division is to create and maintain a marketplace where it is profitable to establish sufficient recycling centers and locations to provide consumers with convenient recycling opportunities through the establishment of minimum refund values and processing fees and, through the proper application of these elements, to enhance the profitability of recycling centers, recycling locations, and other beverage container recycling programs.

(g) The responsibility to provide convenient, efficient, and economical redemption opportunities rests jointly with manufacturers, distributors, dealers, recyclers, processors, and the Department of Conservation.

(h) It is the intent of the Legislature, in enacting this division, that all empty beverage containers redeemed shall be recycled, and that the responsibilities and regulations of the department shall be determined and implemented in a manner that favors the recycling of redeemed containers, as opposed to their disposal.

(i) Nothing in this division shall be interpreted as affecting the current business practices of scrap dealers or recycling centers, except that, to the extent they function as a recycling center or processor, they shall do so in accordance with this division.

(j) The program established by this division will contribute significantly to the reduction of the beverage container component of litter in this state.

SEC. 2. Section 14511.7 of the Public Resources Code is amended to read:

14511.7. “Dropoff or collection program” means any person, association, nonprofit corporation, church, club, or other organization certified by the department, and that accepts or collects empty beverage containers from consumers with the intention to recycle them, or any waste reduction facility that separates beverage containers from the waste stream with the intent to recycle them. “Dropoff or collection program” does not include a certified recycling center or curbside program.

SEC. 3. Section 14514.5 of the Public Resources Code is repealed.

SEC. 4. Section 14520.5 of the Public Resources Code is amended to read:

14520.5. “Recycling location” means a place, mobile unit, reverse vending machine, or other device where a certified recycling center accepts one or more types of empty beverage containers from consumers, and pays or provides the refund value for one or more types of empty beverage containers.

SEC. 5. Section 14524 of the Public Resources Code is amended to read:

14524. “Refund value” means the amount established for each type of beverage container pursuant to Section 14560 that is paid by the following:

(a) A certified recycling center to the consumer or dropoff or collection center for each beverage container redeemed by the consumer or dropoff or collection center. With respect to consumers returning containers to recycling centers, the refund value shall not be subject to tax under the Personal Income Tax Law (Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code) or the Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code).

(b) A processor to a certified recycling center, dropoff or collection program, or curbside program, for each beverage container received from the certified recycling center, dropoff or collection program, or curbside program.

(c) The department to a processor, for each beverage container received by the processor from a certified recycling center, curbside program, or dropoff or collection program.

SEC. 6. Section 14539 of the Public Resources Code is amended to read:

14539. (a) The department shall certify processors pursuant to this section. The director shall adopt, by regulation, requirements and standards for certification. The regulations shall require, but shall not be limited to requiring, that all of the following conditions be met for certification:

(1) The processor demonstrates to the satisfaction of the department that the processor will operate in accordance with this division.

(2) If one or more certified entities have operated at the same location within the past five years, the operations at the location of the processor exhibit, to the satisfaction of the department, a

pattern of operation in compliance with the requirements of this division and regulations adopted pursuant to this division.

(3) The processor notifies the department promptly of any material change in the nature of the processor's operations that conflicts with the information submitted in the operator's application for certification.

(b) A certified processor shall comply with all of the following requirements for operation:

(1) The processor shall not pay a refund value for, or receive a refund value from the department for, any food or drink packaging material or any beverage container or other product that does not have a refund value established pursuant to Section 14560.

(2) The processor shall take those actions that satisfy the department to prevent the payment of a refund value for any food or drink packaging material or any beverage container or other product that does not have a refund value established pursuant to Section 14560.

(3) Unless exempted pursuant to subdivision (b) of Section 14572, the processor shall accept, and pay at least the refund value for, all empty beverage containers, regardless of type, for which the processor is certified.

(4) A processor shall not pay any refund values, processing payments, or administrative fees to a noncertified recycler. A processor may pay refund values, processing payments, or administrative fees to any entity that is identified by the department on its list of certified recycling centers.

(5) A processor shall not pay any refund values, processing payments, or administrative fees on empty beverage containers or other containers that the processor knew, or should have known, were coming into the state from out of the state.

(6) A processor shall not claim refund values, processing payments, or administrative fees on empty beverage containers that the processor knew, or should have known, were received from noncertified recyclers or on beverage containers that the processor knew, or should have known, come from out of the state. A processor may claim refund values, processing payments, or administrative fees on any empty beverage container that does not come from out of the state and that is received from any entity that is identified by the department on its list of certified recycling centers.



(7) A processor shall take the actions necessary and approved by the department to cancel containers to render them unfit for redemption.

(8) A processor shall prepare or maintain the following documents involving empty beverage containers, as specified by the department by regulation:

(A) Shipping reports that are required to be prepared by the processor or that are required to be obtained from recycling centers.

(B) Processor invoice reports.

(C) Cancellation verification documents.

(D) Documents authorizing recycling centers to cancel empty beverage containers.

(E) Processor-to-processor transaction receipts.

(F) Rejected container receipts on materials subject to this division.

(G) Receipts for transactions with beverage manufacturers on materials subject to this division.

(H) Receipts for transactions with distributors on materials subject to this division.

(I) Weight tickets.

(9) In addition to the requirements of paragraph (7), a processor shall cooperate with the department and make available its records of scrap transactions when the review of these records is necessary for an audit or investigation by the department.

(c) The department may recover, in restitution pursuant to paragraph (5) of subdivision (c) of Section 14591.2, any payments made by the department to the processor pursuant to Section 14573 that are based on the documents specified in paragraph (8) of subdivision (b) of this section, that are not prepared or maintained in compliance with the department's regulations, and that do not allow the department to verify claims for program payments.

SEC. 7. Section 14549.6 of the Public Resources Code is amended to read:

14549.6. (a) The department, consistent with Section 14581 and subject to the availability of funds, shall annually pay a total of fifteen million dollars (\$15,000,000) per fiscal year to operators of curbside programs and neighborhood dropoff programs that accept all types of empty beverage containers for recycling. The payments shall be for each container collected by the curbside or

neighborhood dropoff programs and properly reported to the department by processors, based upon all of the following:

(1) The payment amount shall be calculated based upon the volume of beverage containers collected by curbside and neighborhood dropoff programs during the 12-month calendar year ending on December 31 of the fiscal year for which payments are to be made.

(2) The per-container rate shall be calculated by dividing the total volume of beverage containers collected, as determined pursuant to paragraph (1), into the sum of fifteen million dollars (\$15,000,000).

(3) The amount to be paid to each operator of a curbside program or neighborhood dropoff program shall be based upon the per-container rate, calculated pursuant to paragraph (2), multiplied by the program's total reported beverage container volume calculated pursuant to paragraph (1).

(b) The amounts paid pursuant to this section shall be expended by operators of curbside and neighborhood dropoff programs only for activities related to beverage container recycling.

(c) The department shall disburse payments pursuant to this section not later than the end of the fiscal year following the calendar year for which the payments are calculated pursuant to paragraph (1) of subdivision (a), subject to the availability of funds.

(d) The operator of a curbside program or neighborhood dropoff program shall make available for inspection and review any relevant record that the department determines is necessary to verify compliance with this section.

SEC. 8. Section 14549.7 of the Public Resources Code is amended to read:

14549.7. (a) Commencing on January 1, 2007, and consistent with Section 14581, and to the extent that existing funds are available for this purpose, the department shall establish a recycling incentive payment for eligible recycling centers and dropoff or collection programs for empty beverage containers accepted or collected directly from consumers.

(b) To be eligible for recycling incentive payments, a recycling center, or dropoff or collection program shall meet both of the following requirements:

(1) (A) The recycling center or dropoff or collection program is certified, and "open for business," as specified in Section 14571,

during the entire two-year period prior to the six-month period for which payments are made, during the entire six-month period for which payments are made, and at the time the payment is made. A six-month period shall commence either on January 1 or July 1.

(B) Notwithstanding subparagraph (A), a recycling center or dropoff or collection program that was operational prior to July 1, 2005, may receive a recycling incentive payment for eligible beverage containers collected on or after January 1, 2007.

(2) The number of beverage containers accepted or collected directly from consumers for recycling by the recycling center or dropoff or collection program during the six-month period for which payments are made exceeds by 6.5 percent, or more, for calendar year 2007, and by 5 percent, or more, for calendar years 2008 and 2009, the number of beverage containers accepted or collected directly from consumers for recycling by that entity during the same six-month period of the prior year.

(c) (1) Eligible beverage containers are those beverage containers that are accepted or collected directly from consumers for recycling by an eligible recycling center or dropoff or collection program during the six-month period for which payments are made that exceed the number of beverage containers accepted or collected directly from consumers by that entity in the same six-month period of the prior year. Eligible beverage containers determined pursuant to this paragraph shall be the “eligible volume” used to make payments pursuant to paragraph (3) of subdivision (d).

(2) Empty beverage containers purchased or collected by a recycling center or a dropoff or collection program from another certified or registered entity are not eligible for recycling incentive payments.

(d) The department shall make recycling incentive payments for each eligible beverage container accepted or collected directly from consumers by an eligible recycling center and dropoff or collection program and properly reported to the department by a processor, based upon all of the following:

(1) The payment amount shall be calculated based upon the number of eligible beverage containers, as specified in subdivision (c), collected by the eligible recycling centers and dropoff or collection program, as specified in subdivision (b), during the six-month period for which the payments are to be made.

(2) The per-container rate shall be up to one cent (\$0.01) for each eligible beverage container, pursuant to subdivision (c).

(3) The amount to be paid to each recycling center and dropoff or collection program shall be based upon the per-container rate, multiplied by each eligible program's total number of eligible beverage containers calculated pursuant to paragraph (1).

(e) The department shall disburse payments pursuant to this section within 6 months of the end of the six-month period for which the payments are calculated pursuant to paragraph (1) of subdivision (d), subject to the availability of funds.

(f) Only one payment shall be made for each eligible empty beverage container collected by an eligible recycling center or dropoff or collection program.

(g) The operator of an eligible recycling center and dropoff or collection program shall make available for inspection and review any relevant record that the department determines is necessary to verify compliance with this section.

(h) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2010, deletes or extends that date.

SEC. 9. Section 14552 of the Public Resources Code is amended to read:

14552. (a) The department shall establish and implement an auditing system to ensure that the information collected, and refund values and redemption payments paid pursuant to this division, comply with the purposes of this division. Notwithstanding Sections 14573 and 14573.5, the auditing system adopted by the department may include prepayment or postpayment controls.

(b) (1) On or after January 1 of each year, the department may audit or investigate any action taken up to three years before the onset of the audit or investigation and may determine if there was compliance with this division and the regulations adopted pursuant to this division, during that period.

(2) Notwithstanding any other provision of law establishing a shorter statute of limitation, the department may take an enforcement action, including, but not limited to, an action for restitution or to impose penalties, at any time within two years after the department discovers, or with reasonable diligence, should have discovered, a violation of this division or the regulations adopted pursuant to this division.

(c) During the conduct of any inspection, including, but not limited to, an inspection conducted as part of an audit or investigation, the entity that is the subject of the inspection shall, during its normal business hours, provide the department with immediate access to its facilities, operations, and any relevant record, that, in the department's judgment, the department determines are necessary to carry out this section to verify compliance with this division and the regulations adopted pursuant to this division.

(1) The department may take disciplinary action pursuant to Section 14591.2 against any person who fails to provide the department with access pursuant to this subdivision including, but not limited to, imposing penalties and the immediate suspension or termination of any certificate or registration held by the operator.

(2) The department shall protect any information obtained pursuant to this section in accordance with Section 14554, except that this section does not prohibit the department from releasing any information that the department determines to be necessary in the course of an enforcement action.

(d) The auditing system adopted by the department shall allow for reasonable shrinkage in material due to moisture, dirt, and foreign material. The department, after an audit by a qualified auditing firm and a hearing, shall adopt a standard to be used to account for shrinkage and shall incorporate this standard in the audit process.

(e) If the department prevails against any entity in any civil or administrative action brought pursuant to this division, and money is owed to the department as a result of the action, the department may offset the amount against amounts claimed by the entity to be due to it from the department. The department may take this offset by withholding payments from the entity or by authorizing all processors to withhold payment to a certified recycling center.

(f) If the department determines, pursuant to an audit or investigation, that a distributor or beverage manufacturer has overpaid the redemption payment or processing fee, the department may do either of the following:

(1) Offset the overpayment against future payments.

(2) Refund the payment pursuant to Article 3 (commencing with Section 13140) of Chapter 2 of Part 3 of Division 3 of Title 2 of the Government Code.

SEC. 10. Section 14555 of the Public Resources Code is repealed.

SEC. 11. Section 14560.5 of the Public Resources Code is amended to read:

14560.5. (a) (1) Except as provided in paragraph (2), the invoice or other form of accounting of the transaction submitted by a beverage distributor of beverages to a dealer shall separately identify the amount of any redemption payment imposed on beverage containers pursuant to Section 14560 and the separate identification of the invoice or other form of accounting of the transaction shall not combine or include the gross wholesale price with the redemption payment but shall separately state the gross amount of the redemption payment for each type of container included in each delivery.

(2) The invoice or other form of accounting of the transaction submitted by any distributor of beer and malt beverages or wine or distilled spirit coolers to a dealer may separately identify the portion of the gross wholesale price attributable to any redemption payment imposed on beverage containers pursuant to Section 14560 and the separate identification of the invoice or other form of accounting of the transaction may separately state the gross amount of the redemption payment for each type of container included in each delivery. The invoice or other form of accounting of this transaction may separately identify the portion of the gross wholesale price attributable to the redemption payment.

(3) Notwithstanding Section 14541, the department shall randomly inspect beverage distributor invoices or other forms of accounting to ensure compliance with this subdivision. However, an unintentional error in addition or subtraction on an invoice or other form of accounting by a route driver of a distributor shall not be deemed a violation of this subdivision.

(4) For the purposes of this subdivision, the term “type of container” includes the amount of the redemption payment on containers under 24 ounces and on containers 24 ounces or more.

(b) To the extent technically and economically feasible, a dealer may separately identify the amount of any redemption payment on the customer cash register receipt provided to the consumer, by the dealer, that is applied to the purchase of a beverage container.

(c) (1) A dealer shall separately identify the amount of any redemption payment imposed on a beverage container in all advertising of beverage products and on the shelf labels of the dealer's establishment. The separate identification shall be accomplished by stating one of the following:

(A) The price of the beverage product plus a descriptive term, as described in paragraph (2).

(B) The price of the beverage product plus the amount of the applicable redemption payment and a descriptive term, as described in paragraph (2).

(C) The price of the beverage product plus the amount of the applicable redemption payment, a descriptive term, as described in paragraph (2), and the total of these two amounts.

(2) For purposes of paragraph (1), the redemption payment shall be identified by one of the following descriptive terms: "California Redemption Value," "CA Redemption Value," "CRV," "California Cash Refund," "CA Cash Refund," or any other message specified in Section 14561.

(3) A dealer shall not include the redemption payment in the total price of a beverage container in any advertising or on the shelf of the dealer's establishment.

(4) This subdivision applies only to a dealer at a dealer location with a sales and storage area totaling more than 4,000 square feet.

(5) The penalties specified in Sections 14591 and 14591.1 shall not be applied to a person who violates this subdivision.

(d) With regard to the sale of beer and other malt beverages or wine and distilled spirits cooler beverages, any amount of redemption payment imposed by this division is subject to Section 25509 of the Business and Professions Code.

SEC. 12. Section 14561 of the Public Resources Code is amended to read:

14561. (a) A beverage manufacturer shall clearly indicate on all beverage containers sold or offered for sale by that beverage manufacturer in this state the message "CA Redemption Value," "California Redemption Value," "CA Cash Refund," "California Cash Refund," or "CA CRV," by either printing or embossing the beverage container or by securely affixing a clear and prominent stamp, label, or other device to the beverage container.

(b) Any refillable beverage container sold or offered for sale is exempt from this section. However, any beverage manufacturer

or container manufacturer may place upon, or affix to, a refillable beverage container, any message that the manufacturer determines to be appropriate relating to the refund value of the beverage container.

(c) A person shall not offer to sell, or sell to a consumer a beverage container subject to subdivision (a) that has not been labeled pursuant to this section, except for a refillable beverage container that is exempt from labeling pursuant to subdivision (b).

(d) The department may require that a beverage container intended for sale in this state be printed, embossed, stamped, labeled, or otherwise marked with a universal product code or similar machine-readable indicia.

(e) A beverage container labeled with the message specified in subdivision (a) shall have the minimum redemption payment established pursuant to Section 14560, which shall be paid by the distributor to the department pursuant to Section 14574.

SEC. 13. Section 14571 of the Public Resources Code is amended to read:

14571. (a) Except as otherwise provided in this chapter, there shall be at least one certified recycling center or location within every convenience zone that accepts and pays the refund value, if any, at one location for all types of empty beverage containers and is open for business during at least 30 hours per week with a minimum of five hours of operation occurring during periods other than from Monday to Friday, from 9 a.m. to 5 p.m.

(b) (1) Notwithstanding subdivision (a), the department may require a certified recycling center to operate 15 of its 30 hours of operation other than during 9 a.m. to 5 p.m.

(2) Notwithstanding subdivision (a) and paragraph (1), the department may certify a recycling center that will operate less than 30 hours per week, if all of the following conditions are met:

(A) The recycling center is in a rural region. For purposes of this subparagraph, “rural region” means a nonurban area identified by the department on an annual basis using the loan eligibility criteria of the Rural Housing Service of the United States Department of Agriculture, Rural Development Administration, or its successor agency. Those criteria include, but are not limited to, places, open country, cities, towns, or census designated places with populations that are less than 10,000 persons. The department may designate an area with a population of between 10,000 and



50,000 persons as a rural region, unless the area is identified as part of, or associated with, an urban area, as determined by the department on an individual basis.

(B) The recycling center agrees to post a sign indicating the location of the nearest recycling center that is open at least 30 hours per week and that will accept all material types.

(C) The needs of the community and the goals of this division will be best served by certification of the operation as a recycling center.

(c) Before establishing operating hours for a certified recycling center pursuant to subdivision (b), the department shall make a determination that this action is necessary to further the goals of this division and that the proposed operating hours will not significantly decrease the ability of consumers to conveniently return beverage containers for the refund value to a certified recycling center redeeming all material types.

(d) For purposes of this section, if the recycling center is staffed and is not a reverse vending machine, a center is “open for business” if all of the following requirements are met:

(1) An employee of the certified recycling center or location is present during the hours of operation and available to the public to accept containers and to pay the refund values.

(2) In addition to the sign specified in subdivision (h), a sign having a minimum size of two feet by two feet is posted at the certified recycling center or location indicating that the center or location is open. Where allowed by local zoning requirements or where zoning restrictions apply, the sign shall be of the maximum allowable size.

(3) The prices paid, by weight or per container, are posted at the location.

(e) Except as provided in subdivision (f), for the purpose of this section, if the recycling center consists of reverse vending machines or other unmanned automated equipment, the center is “open for business” if the equipment is properly functioning, accepting all types of empty beverage containers at the recycling location, and paying posted refund values no less than the minimums required by this division.

(f) If a recycling center consists of reverse vending machines or other automated equipment, the recycling center is “open for business” if the equipment is properly functioning, and accepting

all types of empty beverage containers at one physical recycling location within the recycling location.

(g) Whenever a recycling center that is a reverse vending machine is not “open for business” during the 30 hours of operation required and posted pursuant to this section and Section 14570, the dealer that is hosting the reverse vending machine at its place of business shall redeem all empty beverage container types at all open cash registers or one designated location in the store, as specified on the sign required pursuant to subdivision (h).

(h) In addition to the sign specified in paragraph (2) of subdivision (d), each reverse vending machine shall be posted with a clear and conspicuous sign on or near the reverse vending machine which states that beverage containers may be redeemed by the host dealer if the machine is nonoperational at any time during the required 30 hours of operation, pursuant to subdivision (g). The department shall determine the size and location of the sign and the message required to be printed on the sign.

SEC. 14. Section 14571.1 of the Public Resources Code is amended to read:

14571.1. On or before January 1 of each year, the department shall, on a statewide basis, designate all convenience zones as of that date, including convenience zones in underserved areas, and shall prepare a map or maps showing these convenience zones.

SEC. 15. Section 14571.7 of the Public Resources Code is amended to read:

14571.7. (a) Except as provided in subdivision (b), in any convenience zone where a recycling location or locations were initially established, but where the location or locations cease to operate in accordance with Section 14571, the department shall notify all dealers within that convenience zone that a recycling location is required to be established within 60 days. If, within 30 days of the notification, a recycling location that satisfies the requirements of Section 14571 has not been established, the department shall notify all dealers within that zone, and one or more dealers within that zone shall establish, or cause to be established, a recycling location.

(b) In any convenience zone where a recycling location or locations were initially established, but where the location or locations cease to operate in accordance with Section 14571, the department shall determine, pursuant to Section 14571.8, if the

convenience zone is eligible for an exemption. If the convenience zone meets all of the requirements for an exemption pursuant to Section 14571.8, the department shall grant one exemption. If the department determines that a convenience zone is not eligible for an exemption pursuant to subdivision (a) and Section 14571.8, the department shall notify all dealers within that convenience zone that a recycling location is required to be established within 60 days. If, within 30 days of the notification, a recycling location that satisfies the requirements of Section 14571 has not been established, the department shall notify all dealers within that zone, and one or more dealers within that zone shall establish, or cause to be established, a recycling location.

SEC. 16. Section 14575 of the Public Resources Code is amended to read:

14575. (a) If any type of empty beverage container with a refund value established pursuant to Section 14560 has a scrap value less than the cost of recycling, the department shall, on January 1, 2000, and on or before January 1 annually thereafter, establish a processing fee and a processing payment for the container by the type of the material of the container.

(b) The processing payment shall be at least equal to the difference between the scrap value offered to a statistically significant sample of recyclers by willing purchasers, and except for the initial calculation made pursuant to subdivision (d), the sum of both of the following:

(1) The actual cost for certified recycling centers, excluding centers receiving a handling fee, of receiving, handling, storing, transporting, and maintaining equipment for each container sold for recycling or, only if the container is not recyclable, the actual cost of disposal, calculated pursuant to subdivision (c). The department shall determine the statewide weighted average cost to recycle each beverage container type, which shall serve as the actual recycling costs for purposes of paragraphs (2) and (3) of subdivision (c), by conducting a survey of the costs of a statistically significant sample of certified recycling centers, excluding those recycling centers receiving a handling fee, for receiving, handling, storing, transporting, and maintaining equipment.

(2) A reasonable financial return for recycling centers.

(c) The department shall base the processing payment pursuant to this section upon all of the following:

(1) The department shall use the average scrap values paid to recyclers between October 1, 2001, and September 30, 2002, for the 2003 calculation and the same 12-month period directly preceding the year in which the processing fee is calculated for any subsequent calculation.

(2) To calculate the 2003 processing payments, the department shall use the recycling costs for certified recycling centers used to calculate the January 1, 2002, processing payments.

(3) For calculating processing payments that will be in effect on and after January 1, 2004, the department shall determine the actual costs for certified recycling centers, every second year, pursuant to paragraph (1) of subdivision (b). The department shall adjust the recycling costs annually to reflect changes in the cost of living, as measured by the Bureau of Labor Statistics of the United States Department of Labor or a successor agency of the United States government.

(d) Notwithstanding paragraph (1) of subdivision (b) and subdivision (c), for the purpose of setting the cost for recycling non polyethylene terephthalate (non-PET) plastic containers by certified recycling centers to determine the processing payment for those containers, the department shall use a recycling cost of six hundred forty-two dollars and sixty-nine cents (\$642.69) per ton for the January 1, 2002, calculation of the processing payment.

(e) Except as specified in subdivision (f), the actual processing fee paid by a beverage manufacturer shall equal 65 percent of the processing payment calculated pursuant to subdivision (b).

(f) The department, consistent with Section 14581 and subject to the availability of funds, shall reduce the processing fee paid by beverage manufacturers by expending funds in each material processing fee account, in the following manner:

(1) On January 1, 2005, and annually thereafter, the processing fee shall equal the following amounts:

(A) Ten percent of the processing payment for a container type with a recycling rate equal to or greater than 75 percent.

(B) Eleven percent of the processing payment for a container type with a recycling rate equal to or greater than 65 percent, but less than 75 percent.

(C) Twelve percent of the processing payment for a container type with a recycling rate equal to or greater than 60 percent, but less than 65 percent.

(D) Thirteen percent of the processing payment for a container type with a recycling rate equal to or greater than 55 percent, but less than 60 percent.

(E) Fourteen percent of the processing payment for a container type with a recycling rate equal to or greater than 50 percent, but less than 55 percent.

(F) Fifteen percent of the processing payment for a container type with a recycling rate equal to or greater than 45 percent, but less than 50 percent.

(G) Eighteen percent of the processing payment for a container type with a recycling rate equal to or greater than 40 percent, but less than 45 percent.

(H) Twenty percent of the processing payment for a container type with a recycling rate equal to or greater than 30 percent, but less than 40 percent.

(I) Sixty-five percent of the processing payment for a container type with a recycling rate less than 30 percent.

(2) Notwithstanding this section, for calendar year 2007 only, the department shall reduce to zero the processing fee paid for any container type with a recycling rate equal to, or greater than 40 percent.

(3) The department shall calculate the recycling rate for purposes of paragraphs (1) and (2) based on the 12-month period ending on June 30 that directly precedes the date of the January 1 processing fee determination.

(g) Not more than once every three months, the department may make an adjustment in the amount of the processing payment established pursuant to this section notwithstanding any change in the amount of the processing fee established pursuant to this section, for any beverage container, if the department makes the following determinations:

(1) The statewide scrap value paid by processors for the material type for the most recent available 12-month period directly preceding the quarter in which the processing payment is to be adjusted is 5 percent more or 5 percent less than the average scrap value used as the basis for the processing payment currently in effect.

(2) Funds are available in the processing fee account for the material type.

(3) Adjusting the processing payment is necessary to further the objectives of this division.

(h) (1) Except as provided in paragraphs (2) and (3), a beverage manufacturer shall pay to the department the applicable processing fee for each container sold or transferred to a distributor or dealer within 40 days of the sale in the form and in the manner that the department may prescribe.

(2) (A) Notwithstanding Section 14506, with respect to the payment of processing fees for beer and other malt beverages manufactured outside the state, the beverage manufacturer shall be deemed to be the person or entity named on the certificate of compliance issued pursuant to Section 23671 of the Business and Professions Code. If the department is unable to collect the processing fee from the person or entity named on the certificate of compliance, the department shall give written notice by certified mail, return receipt requested, to that person or entity. The notice shall state that the processing fee shall be remitted in full within 30 days of issuance of the notice or the person or entity shall not be permitted to offer that beverage brand for sale within the state. If the person or entity fails to remit the processing fee within 30 days of issuance of the notice, the department shall notify the Department of Alcoholic Beverage Control that the certificate holder has failed to comply, and the Department of Alcoholic Beverage Control shall prohibit the offering for sale of that beverage brand within the state.

(B) The department shall enter into a contract with the Department of Alcoholic Beverage Control, pursuant to Section 14536.5, concerning the implementation of this paragraph, which shall include a provision reimbursing the Department of Alcoholic Beverage Control for its costs incurred in implementing this paragraph.

(3) (A) Notwithstanding paragraph (1), if a beverage manufacturer displays a pattern of operation in compliance with this division and the regulations adopted pursuant to this division, to the satisfaction of the department, the beverage manufacturer may make a single annual payment of processing fees, if the beverage manufacturer meets either of the following conditions:

(i) If the redemption payment and refund value is not increased pursuant to paragraph (3) of subdivision (a) of Section 14560, the

beverage manufacturer's projected processing fees for a calendar year total less than ten thousand dollars (\$10,000).

(ii) If the redemption payment and refund value is increased pursuant to paragraph (3) of subdivision (a) of Section 14560, the beverage manufacturer's projected processing fees for a calendar year total less than fifteen thousand dollars (\$15,000).

(B) An annual processing fee payment made pursuant to this paragraph is due and payable on or before February 1 for every beverage container sold or transferred by the beverage manufacturer to a distributor or dealer in the previous calendar year.

(C) A beverage manufacturer shall notify the department of its intent to make an annual processing fee payment pursuant to this paragraph on or before January 31 of the calendar year for which the payment will be due.

(4) The department shall pay the processing payments on redeemed containers to processors, in the same manner as it pays refund values pursuant to Sections 14573 and 14573.5. The processor shall pay the recycling center the entire processing payment representing the actual costs and financial return incurred by the recycling center, as specified in subdivision (b).

(i) When assessing processing fees pursuant to subdivision (a), the department shall assess the processing fee on each container sold, as provided in subdivisions (e) and (f), by the type of material of the container, assuming that every container sold will be redeemed for recycling, whether or not the container is actually recycled.

(j) The container manufacturer, or a designated agent, shall pay to, or credit, the account of the beverage manufacturer in an amount equal to the processing fee.

(k) If, at the end of any calendar year for which glass recycling rates equal or exceed 45 percent and sufficient surplus funds remain in the glass processing fee account to make the reduction pursuant to this subdivision or if, at the end of any calendar year for which PET recycling rates equal or exceed 45 percent and sufficient surplus funds remain in the PET processing fee account to make the reduction pursuant to this subdivision, the department shall use these surplus funds in the respective processing fee accounts in the following calendar year to reduce the amount of the

processing fee that would otherwise be due from glass or PET beverage manufacturers pursuant to this subdivision.

(1) The department shall reduce the glass or PET processing fee amount pursuant to this subdivision in addition to any reduction for which the glass or PET beverage container qualifies under subdivision (f).

(2) The department shall determine the processing fee reduction by dividing two million dollars (\$2,000,000) from each processing fee account by an estimate of the number of containers sold or transferred to a distributor during the previous calendar year, based upon the latest available data.

SEC. 17. Section 14575.2 of the Public Resources Code is repealed.

SEC. 18. Section 14575.5 of the Public Resources Code is repealed.

SEC. 19. Section 14580 of the Public Resources Code is amended to read:

14580. (a) Except as provided in subdivision (d), the department shall deposit all amounts paid as redemption payments by distributors pursuant to Section 14574 and all other revenues received into the California Beverage Container Recycling Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the money in the fund is hereby continuously appropriated to the department for expenditure without regard to fiscal year for the following purposes:

(1) The payment of refund values and administrative fees to processors pursuant to Section 14573.

(2) For a reserve for contingencies, which shall not be greater than an amount equal to 5 percent of the total amount paid to processors pursuant to Section 14573 during the preceding calendar year, plus the interest earned on that amount.

(b) The money in the fund may be expended by the department for the administration of this division only upon appropriation by the Legislature in the annual Budget Act.

(c) After setting aside funds estimated to be needed for expenditures authorized pursuant to this section, the department shall set aside funds on a quarterly basis for the purposes specified in Section 14581. Notwithstanding Section 13340 of the Government Code, that money is hereby continuously appropriated



to the department, without regard to fiscal year, for the purposes specified in Section 14581.

(d) The department shall deposit all civil penalties or fines collected pursuant to this division into the Penalty Account, which is hereby created in the fund. The money in the Penalty Account may be expended by the department only upon appropriation by the Legislature, for purposes of this division.

SEC. 20. Section 14580.5 of the Public Resources Code is repealed.

SEC. 21. Section 14581 of the Public Resources Code is amended to read:

14581. (a) Subject to the availability of funds, and pursuant to subdivision (c), the department shall expend the moneys set aside in the fund, pursuant to subdivision (c) of Section 14580, for the purposes of this section:

(1) (A) On and after July 1, 2005, to June 30, 2006, inclusive, up to thirty-one million dollars (\$31,000,000) may be expended for that fiscal year for the payment of handling fees pursuant to Section 14585.

(B) On and after July 1, 2006, to June 30, 2007, inclusive, up to thirty-three million dollars (\$33,000,000) may be expended for that fiscal year for the payment of handling fees pursuant to Section 14585.

(C) On and after July 1, 2007, to June 30, 2008, inclusive, up to thirty-five million dollars (\$35,000,000) may be expended for that fiscal year for the payment of handling fees pursuant to Section 14585.

(D) For each fiscal year commencing July 1, 2008, the department may expend the amount necessary to make the required handling fee payment pursuant to Section 14585.

(2) Fifteen million dollars (\$15,000,000) shall be expended annually for payments for curbside programs and neighborhood dropoff programs pursuant to Section 14549.6.

(3) (A) Fifteen million dollars (\$15,000,000), plus the proportional share of the cost-of-living adjustment, as provided in subdivision (b), shall be expended annually in the form of grants for beverage container litter reduction programs and recycling programs issued to either of the following:

(i) Certified community conservation corps that were in existence on September 30, 1999, or that are formed subsequent

to that date, that are designated by a city or a city and county to perform litter abatement, recycling, and related activities, if the city or the city and county has a population, as determined by the most recent census, of more than 250,000 persons.

(ii) Community conservation corps that are designated by a county to perform litter abatement, recycling, and related activities, and are certified by the California Conservation Corps as having operated for a minimum of two years and as meeting all other criteria of Section 14507.5.

(B) Grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(4) (A) On or after July 1, 2007, until June 30, 2008, for only that fiscal year, up to twenty million dollars (\$20,000,000) may be expended in the form of competitive grants issued to community conservation corps that are designated by a city or county, and that meet all of the following criteria:

(i) Are certified by the California Conservation Corps as having operated for a minimum of two years.

(ii) Meet all other requirements under Section 14507.5.

(B) The department shall prepare and adopt criteria and procedures for evaluating grant applications on a competitive basis. Eligible activities for the use of these funds shall include developing new projects, or enhancing or assisting existing projects, to increase beverage container recycling and increasing the quality of recycled material at the following locations:

(i) Multifamily dwellings.

(ii) Schools.

(iii) Commercial, state, and local government buildings.

(iv) Bars, restaurants, hotels, and lodging establishments, and entertainment venues.

(v) Parks and beaches.

(C) Grants provided pursuant to this paragraph shall not comprise more than 75 percent of the annual budget of a community conservation corps.

(D) Grants provided pursuant to this paragraph shall support one-time capital improvement projects and shall not be used to support ongoing staff activities.

(E) Grant funds appropriated pursuant to this paragraph that have not been awarded to a grantee prior to the end of the 2007–08 fiscal year shall revert to the fund.

(5) (A) Ten million five hundred thousand dollars (\$10,500,000) may be expended annually for payments of five thousand dollars (\$5,000) to cities and ten thousand dollars (\$10,000) for payments to counties for beverage container recycling and litter cleanup activities, or the department may calculate the payments to counties and cities on a per capita basis, and may pay whichever amount is greater, for those activities.

(B) Eligible activities for the use of these funds may include, but are not necessarily limited to, support for new or existing curbside recycling programs, neighborhood dropoff recycling programs, public education-promoting beverage container recycling, litter prevention, and cleanup, cooperative regional efforts among two or more cities or counties, or both, or other beverage container recycling programs.

(C) These funds may not be used for activities unrelated to beverage container recycling or litter reduction.

(D) To receive these funds, a city, county, or city and county shall fill out and return a funding request form to the Department of Conservation. The form shall specify the beverage container recycling or litter reduction activities for which the funds will be used.

(E) The Department of Conservation shall annually prepare and distribute a funding request form to each city, county, or city and county. The form shall specify the amount of beverage container recycling and litter cleanup funds for which the jurisdiction is eligible. The form shall not exceed one double-sided page in length, and may be submitted electronically. If a city, county, or city and county does not return the funding request form within 90 days of receipt of the form from the department, the city, county, or city and county is not eligible to receive the funds for that funding cycle.

(F) For the purposes of this paragraph, per capita population shall be based on the population of the incorporated area of a city or city and county and the unincorporated area of a county. The department may withhold payment to any city, county, or city and county that has prohibited the siting of a supermarket site, caused a supermarket site to close its business, or adopted a land use policy

that restricts or prohibits the siting of a supermarket site within its jurisdiction.

(6) One million five hundred thousand dollars (\$1,500,000) may be expended annually in the form of grants for beverage container recycling and litter reduction programs.

(7) (A) The department shall expend the amount necessary to pay the processing payment established pursuant to Section 14575. The department shall establish separate processing fee accounts in the fund for each beverage container material type for which a processing payment and processing fee are calculated pursuant to Section 14575, or for which a processing payment is calculated pursuant to Section 14575 and a voluntary artificial scrap value is calculated pursuant to Section 14575.1. All of the following shall be deposited into each account:

(i) All amounts paid as processing fees for each beverage container material type pursuant to Section 14575.

(ii) Funds equal to the difference between the amount in clause (i) and the amount of the processing payments established in subdivision (b) of Section 14575, and adjusted pursuant to paragraphs (2) and (3) of subdivision (c) of, and subdivision (f) of, Section 14575, to reduce the processing fee to the level provided in subdivision (f) of Section 14575, or to reflect the agreement by a willing purchaser to pay a voluntary artificial scrap value pursuant to Section 14575.1.

(B) Notwithstanding Section 13340 of the Government Code, the moneys in each processing fee account are hereby continuously appropriated to the department for expenditure without regard to fiscal years, for purposes of making processing payments, and reducing processing fees, pursuant to Section 14575.

(8) Up to five million dollars (\$5,000,000) may be annually expended by the department for the purposes of undertaking a statewide public education and information campaign aimed at promoting increased recycling of beverage containers.

(9) Until January 1, 2008, the department may expend up to five million dollars (\$5,000,000) for the purposes of undertaking a statewide public education and information campaign aimed at promoting increased recycling of beverage containers that meets both of the following requirements:

(A) The public education and information campaign is multimedia and includes print, radio, and television.

(B) The public education and information campaign is multilingual.

(10) Up to fifteen million dollars (\$15,000,000) may be expended annually by the department for quality incentive payments for empty beverage containers pursuant to Section 14549.1.

(11) Up to twenty million dollars (\$20,000,000) may be expended annually by the department, until January 1, 2012, to issue grants for recycling market development and expansion-related activities aimed at increasing the recycling of beverage containers, including, but not limited to, the following:

(A) Research and development of collecting, sorting, processing, cleaning, or otherwise upgrading the market value of recycled beverage containers.

(B) Identification, development, and expansion of markets for recycled beverage containers.

(C) Research and development for products manufactured using recycled beverage containers.

(D) Research and development to provide high-quality materials that are substantially free of contamination.

(E) Payments to California manufacturers who recycle beverage containers that are marked by resin type identification code “3,” “4,” “5,” “6,” or “7,” pursuant to Section 18015.

(12) Up to ten million dollars (\$10,000,000) may be transferred on a one-time basis by the department to the Recycling Infrastructure Loan Guarantee Account, for expenditure pursuant to Section 14582.

(13) Up to ten million dollars (\$10,000,000) may be expended annually by the department for the payment of recycling incentive payments pursuant to Section 14549.7 until payments for eligible beverage containers redeemed or collected for recycling on or before December 31, 2009, have been paid.

(14) Up to five million dollars (\$5,000,000) may be expended annually by the department for market development payments for empty plastic beverage containers pursuant to Section 14549.2, until January 1, 2012.

(15) Up to five million dollars (\$5,000,000) may be expended, by the department, on a one-time basis beginning on January 1, 2007, in coordination with the Department of Parks and Recreation for the purposes of installing source separated beverage container

recycling receptacles at each of the state parks, starting with those parks that have the highest day use.

(16) Up to five million dollars (\$5,000,000) may be expended, from January 1, 2007, to January 1, 2008, to provide grants to local governments or nonprofit agencies to place multifamily housing source separated beverage container recycling receptacles in low-income communities.

(17) (A) Up to fifteen million dollars (\$15,000,000) may be expended from January 1, 2008, to January 1, 2009, to provide grants to place source separated beverage container recycling receptacles in multifamily housing.

(B) Notwithstanding subdivision (b) of Section 14580, the amount of one hundred ninety-eight thousand dollars (\$198,000) may be expended by the department from the fund, on a one-time basis, for the administrative costs of implementing the grant program established by subparagraph (A).

(b) The fifteen million dollars (\$15,000,000) that is set aside pursuant to paragraph (3) of subdivision (a) is a base amount that the department shall adjust annually to reflect any increases or decreases in the cost of living, as measured by the Department of Labor, or a successor agency, of the federal government.

(c) (1) The department shall review all funds on a quarterly basis to ensure that there are adequate funds to make the payments specified in this section and the processing fee reductions required pursuant to Section 14575.

(2) If the department determines, pursuant to a review made pursuant to paragraph (1), that there may be inadequate funds to pay the payments required by this section and the processing fee reductions required pursuant to Section 14575, the department shall immediately notify the appropriate policy and fiscal committees of the Legislature regarding the inadequacy.

(3) On or before 180 days after the notice is sent pursuant to paragraph (2), the department may reduce or eliminate expenditures, or both, from the funds as necessary, according to the procedure set forth in subdivision (d).

(d) If the department determines that there are insufficient funds to make the payments specified pursuant to this section and Section 14575, the department shall reduce all payments proportionally.

(e) Prior to making an expenditure pursuant to paragraph (7) of subdivision (a), the department shall convene an advisory

committee consisting of representatives of the beverage industry, beverage container manufacturers, environmental organizations, the recycling industry, nonprofit organizations, and retailers, to advise the department on the most cost-effective and efficient method of the expenditure of the funds for that education and information campaign.

(f) After setting aside money for the expenditures required pursuant to subdivisions (a) and (b) and Section 14580, the department may, on and after January 1, 2007, but not after July 1, 2007, expend remaining moneys in the fund to pay a refund value in an amount greater than the refund value established pursuant to subdivision (b) of Section 14560.

SEC. 22. Section 14588.1 of the Public Resources Code is amended to read:

14588.1. (a) As used in this chapter, “unfair and predatory pricing” means the payment to consumers by a supermarket site, that receives handling fees for the redemption of beverage containers, in an amount that exceeds the sum of both of the following:

(1) The California refund value for that container.

(2) (A) If the supermarket site is not located in a rural region, the average scrap value paid per pound for that container type by specified certified recycling centers located within a five-mile radius of the supermarket site on the date of the alleged occurrence, the day before the alleged occurrence, and the day after the alleged occurrence.

(B) If the supermarket site is located in a rural region, the average scrap value paid per pound for that container type by specified certified recycling centers located within a 10-mile radius of the supermarket site on the date of the alleged occurrence, the day before the alleged occurrence, and the day after the alleged occurrence.

(b) In calculating the three-day average price paid by recyclers within the specified distance of a recycler alleged to have engaged in predatory pricing, as required by subdivision (a), the department shall only survey those recyclers who did not receive handling fees in three or more of the 12 whole months immediately preceding the date of the allegation of predatory pricing.

(c) For purposes of this chapter, “rural region” means a nonurban area identified by the department on an annual basis using the loan

eligibility criteria of the Rural Housing Service of the United States Department of Agriculture, Rural Development Administration, or its successor agency. Those criteria include, but are not limited to, places, open country, cities, towns, or census designated places with populations that are less than 10,000 persons. The department may designate an area with population of between 10,000 and 50,000 persons as a rural region, unless the area is identified as part of, or associated with, an urban area, as determined by the department on an individual basis.

SEC. 23. Section 14588.2 of the Public Resources Code is amended to read:

14588.2. (a) To ensure that handling fees paid to a supermarket site are not used for the purpose of engaging in unfair and predatory pricing, and to otherwise further the intent of this chapter, the department shall follow all of the requirements of this section upon the complaint of either of the following:

(1) Any certified recycler located within five miles of the supermarket site alleged to have engaged in unfair and predatory pricing if not located in a rural region.

(2) Any certified recycler located within 10 miles of the supermarket site alleged to have engaged in unfair and predatory pricing if located in a rural region.

(b) (1) Within 50 days of receiving the complaint, the department shall complete an audit of the payments for the redemption of beverage containers being paid by the supermarket site, and by all other certified recycling centers as specified in Section 14588.1, for the purpose of determining whether the supermarket site is engaged in unfair and predatory pricing.

(2) The department shall withhold from public disclosure any proprietary information collected by the department in the course of the audit mandated by paragraph (1). The department shall exercise its discretion in determining what information is proprietary.

(c) (1) If the director determines there is probable cause that a supermarket site, against which a complaint has been made, has engaged in unfair and predatory pricing, the director shall, within 60 days of receiving the complaint, convene an informal hearing before the director, or the director's designee.

(2) At least 10 days before the hearing, the director shall forward the results of the audit to the complainant and respondent.



(3) At the hearing, the director, or the director's designee, shall review the audit conducted pursuant to subdivision (b) and any evidence presented by the complainant that a supermarket site has engaged in unfair and predatory pricing. The director, or the director's designee, shall also review any evidence presented by the respondent that the respondent has not engaged in unfair and predatory pricing.

(4) The respondent shall be given the opportunity to rebut the presumption of unfair and predatory pricing imposed by Section 14588.1 by demonstrating to the satisfaction of the director, or the director's designee, that the respondent did both of the following:

(A) The respondent made a good faith effort to determine the average scrap value paid per pound for that container type by certified recycling centers located within a five-mile or 10-mile radius of the supermarket site, pursuant to subdivision (a) of Section 14588.1, within 30 days before the date of the alleged violation.

(B) The three-day average scrap value the respondent paid per pound for that container type was within 2.5 percent of the three-day average scrap value paid per pound determined by the department pursuant to subdivision (a).

(5) The director, or the director's designee, may dismiss a complaint made pursuant to subdivision (a) upon determining either of the following:

(A) The complaint is without basis.

(B) The complaint is repetitious of prior similar complaints against the same supermarket site for which the director or the director's designee has determined that no unfair and predatory pricing occurred.

(d) Within 20 days of the completion of the hearing, the director, or the director's designee, shall determine whether the supermarket site has engaged in unfair and predatory pricing. This determination shall be based upon the audit conducted pursuant to subdivision (b), and upon any clear and convincing evidence of unfair and predatory pricing presented at the hearing.

(e) During the time period from the date of the receipt of a complaint pursuant to subdivision (a), until the date the director makes a determination pursuant to subdivision (d), the supermarket site against which the allegation of unfair and predatory pricing is made shall not receive handling fees that were earned during the

period commencing with the date of the alleged unfair and predatory pricing. However, nothing in this subdivision shall affect the payment of handling fees to a supermarket site that is found not to have engaged in unfair and predatory pricing pursuant to this section, or to the activities of a supermarket site prior to the date of the alleged unfair and predatory pricing.

(f) If, after complying with the procedure established pursuant to this section, the director, or the director's designee, determines that a supermarket site has engaged in unfair and predatory pricing, the site is ineligible to receive handling fees as specified by this section.

(1) If the determination of unfair and predatory pricing is the first for the site, the site is ineligible to receive handling fees for six months from the date that the respondent is found to have engaged in unfair and predatory pricing.

(2) If the determination of unfair and predatory pricing is the second for the site, the site is ineligible to receive handling fees for one year from the date that the respondent is found to have engaged in unfair and predatory pricing.

(3) If the determination of unfair and predatory pricing is the third or more for the site, the site is ineligible to receive handling fees for five years after the date that the respondent is found to have engaged in unfair and predatory pricing.

(g) The complainant or respondent may obtain a review of the determination made pursuant to this section by filing in the superior court a petition for a writ of mandate within 30 days following the issuance of the determination. Section 1094.5 of the Code of Civil Procedure shall govern judicial proceedings pursuant to this subdivision, except that the court shall exercise its independent judgment. If a petition for a writ of mandate is not filed within the time limits set forth in this subdivision, the determination made pursuant to this subdivision is not subject to review by any court or agency.

(h) If either party appeals the determination of the director, or the director's designee, pursuant to subdivision (g), and the department prevails, the department may recover any costs associated with its defense of the complaint.

SEC. 24. Section 14593 of the Public Resources Code is amended to read:

14593. Notwithstanding subdivisions (b) and (c) of Section 14591.1, the department may assess a civil penalty of up to 15 percent of the amount due for payment, and interest at the rate earned by the Pooled Money Investment Account, on distributors and beverage manufacturers for underpayment or late payment of the redemption payments for containers to the fund. The department may examine the accounts and records of distributors and beverage manufacturers that pay or should pay a redemption payment. No penalty shall be assessed until 30 days after the department has notified the distributor or manufacturer of the penalty assessment, and the amount due for payment and interest has not been paid.

SEC. 25. Section 14594 of the Public Resources Code is amended to read:

14594. (a) Notwithstanding subdivisions (b) and (c) of Section 14591.1, the department may assess a civil penalty of up to 15 percent of the amount due for payment, and interest at the rate earned by the Pooled Money Investment Account, on a beverage manufacturer that fails to pay a processing fee required pursuant to Section 14575. The department may examine the accounts and records of a beverage manufacturer that pays or should pay a processing fee. No penalty shall be assessed until 30 days after the department has notified the manufacturer of the penalty assessment, and the amount due for payment and interest has not been paid.

(b) If the department determines that an audit of a beverage manufacturer shows that there has been an underpayment of a processing fee, the department may examine the records concerning beverage container sales of a container manufacturer that supplied the beverage containers to the beverage manufacturer.

SEC. 26. Section 42889 of the Public Resources Code, as amended by Section 56 of Chapter 77 of the Statutes of 2006, is amended to read:

42889. (a) Commencing January 1, 2005, of the moneys collected pursuant to Section 42885, an amount equal to seventy-five cents (\$0.75) per tire on which the fee is imposed shall be transferred by the State Board of Equalization to the Air Pollution Control Fund. The state board shall expend those moneys, or allocate those moneys to the districts for expenditure, to fund programs and projects that mitigate or remediate air pollution caused by tires in the state, to the extent that the state board or the applicable district determines that the program or project

remediates air pollution harms created by tires upon which the fee described in Section 42885 is imposed.

(b) The remaining moneys collected pursuant to Section 42885 shall be used to fund the waste tire program, and shall be appropriated to the board in the annual Budget Act in a manner consistent with the five-year plan adopted and updated by the board. These moneys shall be expended for the payment of refunds under this chapter and for the following purposes:

(1) To pay the administrative overhead cost of this chapter, not to exceed 6 percent of the total revenue deposited in the fund annually, or an amount otherwise specified in the annual Budget Act.

(2) To pay the costs of administration associated with collection, making refunds, and auditing revenues in the fund, not to exceed 3 percent of the total revenue deposited in the fund, as provided in subdivision (c) of Section 42885.

(3) To pay the costs associated with operating the tire recycling program specified in Article 3 (commencing with Section 42870).

(4) To pay the costs associated with the development and enforcement of regulations relating to the storage of waste tires and used tires. The board shall consider designating a city, county, or city and county as the enforcement authority of regulations relating to the storage of waste tires and used tires, as provided in subdivision (c) of Section 42850, and regulations relating to the hauling of waste and used tires, as provided in subdivision (b) of Section 42963. If the board designates a local entity for that purpose, the board shall provide sufficient, stable, and noncompetitive funding to that entity for that purpose, based on available resources, as provided in the five-year plan adopted and updated as provided in subdivision (a) of Section 42885.5. The board may consider and create, as appropriate, financial incentives for citizens who report the illegal hauling or disposal of waste tires as a means of enhancing local and statewide waste tire and used tire enforcement programs.

(5) To pay the costs of cleanup, abatement, removal, or other remedial action related to waste tire stockpiles throughout the state, including all approved costs incurred by other public agencies involved in these activities by contract with the board. Not less than six million five hundred thousand dollars (\$6,500,000) shall

be expended by the board during each of the following fiscal years for this purpose: 2001–02 to 2006–07, inclusive.

(6) To make studies and conduct research directed at promoting and developing alternatives to the landfill disposal of waste tires.

(7) To assist in developing markets and new technologies for used tires and waste tires. The board's expenditure of funds for purposes of this subdivision shall reflect the priorities for waste management practices specified in subdivision (a) of Section 40051.

(8) To pay the costs associated with implementing and operating a waste tire and used tire hauler program and manifest system pursuant to Chapter 19 (commencing with Section 42950).

(9) To pay the costs to create and maintain an emergency reserve, which shall not exceed one million dollars (\$1,000,000).

(10) To pay the costs of cleanup, abatement, or other remedial action related to the disposal of waste tires in implementing and operating the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program established pursuant to Chapter 2.5 (commencing with Section 48100) of Part 7.

(c) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2015, deletes or extends that date.

SEC. 27. Section 42889 of the Public Resources Code, as added by Section 14.5 of Chapter 707 of the Statutes of 2004, is amended to read:

42889. Funding for the waste tire program shall be appropriated to the board in the annual Budget Act. The moneys in the fund shall be expended for the payment of refunds under this chapter and for the following purposes:

(a) To pay the administrative overhead cost of this chapter, not to exceed 5 percent of the total revenue deposited in the fund annually, or an amount otherwise specified in the annual Budget Act.

(b) To pay the costs of administration associated with collection, making refunds, and auditing revenues in the fund, not to exceed 3 percent of the total revenue deposited in the fund, as provided in subdivision (b) of Section 42885.

(c) To pay the costs associated with operating the tire recycling program specified in Article 3 (commencing with Section 42870).

(d) To pay the costs associated with the development and enforcement of regulations relating to the storage of waste tires and used tires. The board shall consider designating a city, county, or city and county as the enforcement authority of regulations relating to the storage of waste tires and used tires, as provided in subdivision (c) of Section 42850, and regulations relating to the hauling of waste and used tires, as provided in subdivision (b) of Section 42963. If the board designates a local entity for that purpose, the board shall provide sufficient, stable, and noncompetitive funding to that entity for that purpose, based on available resources, as provided in the five-year plan adopted and updated as provided in subdivision (a) of Section 42855.5. The board may consider and create, as appropriate, financial incentives for citizens who report the illegal hauling or disposal of waste tires as a means of enhancing local and statewide waste tire and used tire enforcement programs.

(e) To pay the costs of cleanup, abatement, removal, or other remedial action related to waste tire stockpiles throughout the state, including all approved costs incurred by other public agencies involved in these activities by contract with the board. Not less than six million five hundred thousand dollars (\$6,500,000) shall be expended by the board during each of the following fiscal years for this purpose: 2001–02 to 2006–07, inclusive.

(f) This section shall become operative on January 1, 2015.

SEC. 28. Section 42963 of the Public Resources Code is amended to read:

42963. (a) This chapter, or any regulations adopted pursuant to Section 42966, is not a limitation on the power of a city, county, or district to impose and enforce reasonable land use conditions or restrictions on facilities that handle waste or used tires in order to protect the public health and safety or the environment, including preventing or mitigating potential nuisances, if the conditions or restrictions do not conflict with, or impose less stringent requirements than, this chapter or those regulations. However, this chapter, including any regulations that are adopted pursuant to Section 42966, is intended to establish a uniform statewide program for the regulation of waste and used tire haulers that will prevent the illegal disposal of tires, but which will not subject waste and used tire haulers to multiple registration or manifest requirements.

Therefore, any local laws regulating the transportation of waste or used tires are preempted by this chapter.

(b) Upon request of a city, county, or city and county, the board may designate, in writing, that city, county, or city and county to exercise the enforcement authority granted to the board under this chapter. A city, county, or city and county designated by the board pursuant to this subdivision shall follow the same procedures set forth for the board under this article. This designation shall not limit the authority of the board to take action it deems necessary or proper to ensure the enforcement of this chapter.

SEC. 29. Section 45014 of the Public Resources Code is amended to read:

45014. (a) Upon the failure of a person to comply with a final order issued by a local enforcement agency or the board, the Attorney General, upon request of the board, shall petition the superior court for the issuance of a preliminary or permanent injunction, or both, as may be appropriate, restraining the person or persons from continuing to violate the order or complaint.

(b) An attorney authorized to act on behalf of the local enforcement agency or the board may petition the superior court for injunctive relief to enforce this part, a term or condition in a solid waste facilities permit, or a standard adopted by the board or the local enforcement agency.

(c) In addition to the administrative imposition of civil penalties pursuant to this part, Article 6 (commencing with Section 42850) of Chapter 16 of Part 3, and Article 4 (commencing with Section 42962) of Chapter 19 of Part 3, an attorney authorized to act on behalf of the local enforcement agency or the board may apply, to the clerk of the appropriate court in the county in which the civil penalty was imposed, for a judgment to collect the penalty. The application, which shall include a certified copy of the decision or order in the civil penalty action, constitutes a sufficient showing to warrant issuance of the judgment. The court clerk shall enter the judgment immediately in conformity with the application. The judgment so entered shall include the amount of the court filing fee that would have been due from an applicant who is not a public agency, and has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered. The amount of the unpaid court filing

fee shall be paid to the court prior to satisfying any of the civil penalty amount. Thereafter, any civil penalty or judgment recovered shall be paid, to the maximum extent allowed by law, to the board or to the local enforcement agency, whichever is represented by the attorney who brought the action.

SEC. 30. Section 71205.3 of the Public Resources Code is amended to read:

71205.3. (a) On or before January 1, 2008, the commission shall adopt regulations that do all of the following:

(1) Except as provided otherwise in Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to implement the interim performance standards for the discharge of ballast water recommended in accordance with Table x-1 of the California State Lands Commission Report on Performance Standards for Ballast Water Discharges in California Waters, as approved by the commission on January 26, 2006.

(2) Except as provided otherwise in Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to comply with the following implementation schedule:

Ballast water capacity of vessel	Standards apply to new vessels in this size class constructed on or after:	Standards apply to all other vessels in this size class beginning in:
<1500 metric tons	January 1, 2010	January 1, 2016
1500-5000 metric tons	January 1, 2010	January 1, 2014
>5000 metric tons	January 1, 2012	January 1, 2016

(3) Notwithstanding Section 71204.7, require an owner or operator of a vessel carrying, or capable of carrying, ballast water that operates in the waters of the state to meet the final performance standard for the discharge of ballast water of zero detectable for all organism size classes by 2020, as approved by the commission on January 26, 2006.

(b) On or before January 1, 2009, for the interim performance standards specified in paragraph (1) of subdivision (a) that have to be complied with in 2010, as specified in paragraph (2) of subdivision (a), and not less than 18 months prior to the scheduled compliance date specified in paragraph (2) of subdivision (a) for



each subsequent class and the date for implementation of the final performance standard, as specified in paragraph (3) of subdivision (a), the commission, in consultation with the State Water Resources Control Board, the United States Coast Guard, and the advisory panel described in subdivision (b) of Section 71204.9, shall prepare, or update, and submit to the Legislature a review of the efficacy, availability, and environmental impacts, including the effect on water quality, of currently available technologies for ballast water treatment systems. If technologies to meet the performance standards are determined in a review to be unavailable, the commission shall include in that review an assessment of why the technologies are unavailable.

SEC. 31. Section 31560 of the Vehicle Code is amended to read:

31560. (a) A person operating a vehicle, or combination of vehicles, in the transportation of 10 or more used tires or waste tires, or a combination of used tires and waste tires totaling 10 or more, as defined in Section 42950 of the Public Resources Code, shall be registered with the California Integrated Waste Management Board, unless specifically exempted, as provided in Chapter 19 (commencing with Section 42950) of Part 3 of Division 30 of the Public Resources Code and in regulations adopted by the board to implement that chapter.

(b) It is unlawful and constitutes an infraction for a person engaged in the transportation of 10 or more used tires or waste tires, or a combination of used tires and waste tires totaling 10 or more, to violate a provision of this article or Section 42951 of the Public Resources Code.

SEC. 32. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 33. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within

the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure the protection of the environment at the earliest possible time, it is necessary that this act take effect immediately.











Approved \_\_\_\_\_, 2008

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*Governor*